

93.

APPROVAL—SALE, BY STATE THROUGH DIRECTOR OF PUBLIC WORKS TO THE CHESAPEAKE AND OHIO RAILWAY COMPANY, ABANDONED HOCKING CANAL LANDS AS DESIGNATED, ALONG FULTON STREET, CITY OF NELSONVILLE, ATHENS COUNTY, OHIO, \$300.00.

COLUMBUS, OHIO, February 4, 1939.

HON. CARL G. WAHL, *Director, Department of Public Works, Columbus, Ohio.*

DEAR SIR: This is to acknowledge your communication of recent date with which you submit for my examination and approval a transcript of your proceedings as Superintendent of Public Works relating to the sale by you as such officer of a parcel of abandoned Hocking Canal lands in the City of Nelsonville, Ohio, to The Chesapeake and Ohio Railway Company.

The parcel of abandoned canal lands here in question which, as indicated in and by this transcript, you have sold to said railway company for the sum of \$300.00, the appraised value thereof, is a part of River Lot No. 643 in Section 24, Township 12 North, Range 15 West, Ohio Company's Purchase, and is more particularly described as follows:

Beginning at an iron monument in the southerly state property line of the abandoned Hocking Canal and on the east side of Fulton Street, said monument being south $6^{\circ} 04'$ west (C.&O. Ry. Co.'s bearings) south $7^{\circ} 27'$ west (Paul Allen's bearings) fourteen and two-tenths (14.2') feet from the canal survey transit line at Canal Survey Station 2153+92.8; thence with the state property line, being also the northerly right of way line of The Chesapeake and Ohio Railway Company, south $65^{\circ} 09'$ east (C.&O. Ry. Co.'s bearings) south $66^{\circ} 07'$ east (Allen's bearings) five hundred two and seventy-six hundredths (302.76') feet to the west line of the property of C. D. Shafer Company; thence north $18^{\circ} 49'$ east (C.&O. Ry. Co.'s bearings) north $17^{\circ} 51'$ east (Paul Allen's bearings) with said west property line produced, five and forty-two hundredths (5.42') feet to the

southerly line of the Boulevard, or Parkway Drive, now under construction by the city of Nelsonville, said west property line produced also intersecting the canal survey transit line at canal survey station 2158+98.26; thence north $65^{\circ} 11'$ west, (C.&O. Ry. Co.'s bearings) north $66^{\circ} 15'$ west (Paul Allen's bearings) with the southerly line of said Boulevard, being also thirty-five (35') feet from and parallel with the center line of said Boulevard, five hundred three and ninety-two hundredths (503.92') feet to a point in the state property line on the east side of Fulton Street; thence with the state property line south $6^{\circ} 04'$ west (C.&O. Ry. Co.'s bearings) south $7^{\circ} 27'$ west (Paul Allen's bearings) five and four-tenths (5.4') feet to the point of beginning, containing 0.061 of an acre, more or less, and being all that part of the abandoned Hocking Canal land bounded on the west by Fulton Street, on the south by the right-of-way of The Chesapeake and Ohio Railway Company, on the east by the west line produced of property of C. D. Shafer Company and on the north by a line which is thirty-five (35') feet southerly from and parallel with the center line of the Boulevard now under construction by the city of Nelsonville.

As recited in the transcript of your proceedings relating to the sale of this property, the same is being sold under the authority of House Bill No. 417, enacted by the 88th General Assembly under date of April 19, 1929, 113 O. L., 521. This act, which amended certain sections of an act of the General Assembly of Ohio passed May 31, 1911, providing for the abandonment of the Hocking Canal, provides, among other things, that the Superintendent of Public Works is authorized to sell such of said abandoned Hocking Canal lands as he may deem it to be for the best interests of the State to sell, which sale shall be in conformity with the provisions of section 13971 of the General Code relating generally to the sale of canal lands in this State. In this connection, it is noted that section 2 of said act of April 19, 1929, 113 O. L., 521, excepts and reserves from the provisions of the act authorizing the sale of these canal lands, such parcels thereof as may be designated by the Director of Highways as lands necessary in any scheme of highway improvement adjacent to said canal lands. As to this, it appears from the records in the office of the Director of Highways and, apparently, also in the office of the Director of Public Works, that under date of July 23, 1930, the Director of Highways designated and reserved for highway purposes a section of Hocking Canal lands in the City of Nelsonville, Ohio, which included the above described parcel of land sold to The Chesapeake and Ohio Railway Company. It is further noted, however, that on January 5, 1939, the Director of Highways by entry in the journal of his office found and determined that that part of said Hocking Canal lands between station 2134+76 and station

2203+96.6 are not needed in any scheme of highway development as contemplated in section 2 of the act of April 19, 1929, above referred to, and by said entry such canal lands not needed for highway purposes are released to the Director of Public Works "for his disposition as provided by law." The above described parcel of canal lands sold by you to The Chesapeake and Ohio Railway Company is included in that part of said canal lands which was released to the Director of Public Works for sale or other disposition as provided for in said act.

In this situation, it appears that you are authorized to sell this parcel of abandoned Hocking Canal lands as provided for in said act and in section 13971, General Code, therein referred to. And inasmuch as conformable to the conditions prescribed in section 13971, General Code, you have found that this parcel of canal land is not required for canal or hydraulic purposes, that the same cannot be leased so as to yield an annual income of six per cent upon the appraised value of the property, and that the appraised value of the parcel of land sold does not exceed \$500.00, you are authorized to sell this parcel of land at private sale, subject to the approval of the Governor and the Attorney General. I am accordingly approving the sale of this property and your proceedings relating thereto, as is evidenced by my approval endorsed upon the transcript of such proceedings and the duplicate copy thereof, both of which are herewith enclosed.

Respectfully,

THOMAS J. HERBERT,
Attorney General.